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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ERIC WHITE,
12 Plaintiff,
13 v.
14 CORRECTIONAL SERGEANT RIVERRA,
15 Defendant.

Case No. CV 13-08346 JFW (SS)

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**MEMORANDUM AND ORDER
DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

I.

INTRODUCTION

On December 4, 2013, Eric White ("Plaintiff"), a California state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (the "Complaint"). For the reasons stated below, the Complaint is dismissed with leave to amend.¹

Congress mandates that district courts perform an initial screening of complaints in civil actions where a prisoner seeks

¹ Magistrate judges may dismiss a complaint with leave to amend without approval of the district judge. McKeever v. Block, 932 F.2d 795, 797-98 (9th Cir. 1991).

1 redress from a governmental entity or employee. 28 U.S.C.
2 § 1915A(a). This Court may dismiss such a complaint, or any
3 portions thereof, before service of process if it concludes that
4 the complaint (1) is frivolous or malicious, (2) fails to state a
5 claim upon which relief can be granted, or (3) seeks monetary
6 relief from a defendant who is immune from such relief. 28
7 U.S.C. § 1915A(b)(1-2); see also Lopez v. Smith, 203 F.3d 1122,
8 1126-27, 1126 n.7 (9th Cir. 2000) (en banc).

10 II.

11 ALLEGATIONS OF THE COMPLAINT

12
13 Plaintiff sues Correctional Sergeant Riverra ("Defendant"),
14 an employee of California State Prison-Los Angeles ("CSP-LA"), in
15 his individual and official capacities. (Complaint at 2).

16
17 According to the Complaint, before his conviction, Plaintiff
18 was a pretrial detainee at the Men's Central Jail ("MCJ") in
19 downtown Los Angeles. (Id. at 2). At the time, Defendant was a
20 Los Angeles County Sheriff's Deputy assigned to MCJ. (Id.).
21 While at MCJ, Plaintiff witnessed deputies physically abusing
22 other pretrial detainees and was himself "abused, assaulted,
23 an[d] physically mistreated" (Id.). Plaintiff
24 cooperated with federal authorities in an ongoing investigation
25 of the deputies' abuse. (Id. at 2-4). Plaintiff's mother,
26 Elaine Guardado, also complained to various agencies about the
27 abuse Plaintiff suffered at MCJ. (Id. at 2).

28 //

1 Following his conviction, Plaintiff was sent to Salinas
2 Valley State Prison and later, in October 2012, to CSP-LA, where
3 he is currently housed. (Id.). Around the time of Plaintiff's
4 transfer to CSP-LA, CSP-LA hired Defendant as a correctional
5 official. (Id.).
6

7 At CSP-LA, Defendant was the supervisor in charge of inmate
8 visitation on the D-Facility. (Id.). Plaintiff claims that
9 Defendant routinely denied visitation requests from Plaintiff's
10 mother as retaliation for Plaintiff's cooperation with
11 authorities during the federal investigation at MCJ. (Id. at 3-
12 4). According to Plaintiff, "Defendant Riverra created an
13 arbitrary pretext to further create cause and reason for denying
14 Plaintiff and mother visiting [sic]." (Id. at 3). As a result,
15 between October 2012 and August 2013, Plaintiff was "deprived and
16 denied various visiting weekends with [his] mother, some of which
17 Plaintiff['s] mother begged and pleaded [sic] with prison
18 officials to rectify Defendant Riverra's retaliatory
19 denial" (Id.).
20

21 Plaintiff attempted to file a grievance for "relief from
22 [D]efendant's harassing retaliatory act." (Id.). However,
23 "Defendant Riverra purposely frustrated the process by refusing
24 to provide an informal response to Plaintiff['s] dispute."
25 (Id.). Moreover, when Plaintiff attempted to "bypass" the
26 informal response requirement because of Defendant's refusal,
27 CSP-LA appeals coordinators told Plaintiff that his grievance
28 could not be processed because "Plaintiff show[ed] no attempt to

1 resolve this dispute with the [D]efendant at the lowest level
2 possible[,] which is the informal level review." (Id.).

3
4 Plaintiff eventually obtained an informal response in July
5 2013, and thereupon filed a second inmate grievance concerning
6 the denial of his mother's visitation rights. (Id.). The
7 grievance was granted at the first level of review and
8 Plaintiff's mother was approved to visit Plaintiff as of August
9 17, 2013. (Id. at 4).

10
11 According to exhibits attached to the Complaint, CSP-LA
12 maintained that Plaintiff's mother's CDC 106 visiting
13 questionnaire was initially disapproved due to missing
14 information. (Id. at 4; Exhibit A at 8, 12).² CSP-LA's first
15 level response to Plaintiff's appeal states that "[t]he results
16 of the inquiry revealed that your prospective visitor's CDC 106
17 Visiting Questionnaire was initially processed and disapproved
18 under provisions set forth in the California Code of Regulations
19 (CCR), Title 15 Section 3172.1. However, your prospective
20 visitor, Ms. Guardado submitted all necessary documentation to
21 receive approval from the visiting department. Ms. Guardado's
22 visiting privileges were approved on August 17, 2013," i.e.,
23 approximately ten months after Plaintiff was transferred to CSP-
24 LA. (Exhibit A at 12).

25 \\

26
27 ² The Court will cite to the Complaint and its attached
28 Exhibit as though they formed a single, consecutively-paginated
document.

1 Plaintiff asserts that Defendant violated his "First, Sixth,
2 Eighth, and Fourteenth" Amendment rights. (Id. at 1). Plaintiff
3 specifically appears to raise a First Amendment retaliation claim
4 based on the denial of his mother's visitation requests. (Id. at
5 2-4). Although the Complaint is not entirely clear, it is
6 possible that Plaintiff is also attempting to assert a violation
7 of his due process rights based on Defendant's interference with
8 Plaintiff's attempts to file a grievance. (Id. at 2-4).
9 Plaintiff seeks a total of \$25,000 in compensatory and punitive
10 damages, as well as declaratory and injunctive relief. (Id. at
11 5).

12 13 III.

14 DISCUSSION

15
16 Under 28 U.S.C. § 1915A(b), the Court must dismiss the
17 Complaint due to defects in pleading. Pro se litigants in civil
18 rights cases, however, must be given leave to amend their
19 complaints unless it is absolutely clear that the deficiencies
20 cannot be cured by amendment. Lopez, 203 F.3d at 1127-29.
21 Accordingly, the Court grants Plaintiff leave to amend, as
22 indicated below.

23 24 A. The Claims Against Defendant In His Official Capacity Are 25 Defective

26
27 Plaintiff sues Defendant in both his individual and official
28 capacities. (Complaint at 2). A suit against a state official

1 in his official capacity is functionally a suit against the
2 state. Flint v. Dennison, 488 F.3d 816, 824-25 (9th Cir. 2007).
3 However, the Eleventh Amendment bars federal actions for damages,
4 such as a civil rights suit under Section 1983, against states.
5 Pena v. Gardner, 976 F.2d 469, 472 (9th Cir. 1992).
6 Consequently, the Eleventh Amendment also bars claims for damages
7 against state officials acting in their official capacity. See
8 Flint, 488 F.3d at 824-25 (“[S]tate officials sued in their
9 official capacities . . . are not ‘persons’ within the meaning of
10 § 1983 and are therefore generally entitled to Eleventh Amendment
11 immunity.”). Thus, the allegations against Defendant in his
12 “official capacity” are defective and must be dismissed. To the
13 extent that Plaintiff intends to seek damages for violation of
14 his civil rights, he may sue Defendant under Section 1983 in his
15 individual capacity only.

16
17 **B. Plaintiff Fails To State A Claim Under The Sixth Or Eighth**
18 **Amendments**

19
20 Plaintiff claims that Defendant violated his Sixth and
21 Eighth Amendment rights, although he does not clearly identify
22 the bases for those claims. Assuming that Plaintiff is alleging
23 a claim arising out of the Sixth Amendment’s guarantee of a
24 criminal defendant’s right to counsel, Plaintiff has failed to
25 allege any facts suggesting interference with his right to
26 counsel.

1 Additionally, Plaintiff claims that his Eighth Amendment
2 rights were violated. (Complaint at 1). The Eighth Amendment
3 prohibits "cruel and unusual" punishments. Rhodes v. Chapman,
4 452 U.S. 337, 345 (1981). "To sustain an Eighth Amendment claim,
5 the plaintiff must prove a denial of 'the minimal civilized
6 measure of life's necessities'" Keenan v. Hall, 83 F.3d
7 1083, 1089 (9th Cir. 1996) (as amended by 135 F.3d 1318 (9th Cir.
8 1998)) (quoting Rhodes, 452 U.S. at 347). Additionally, there
9 must be a showing of "'deliberate indifference' by prison
10 personnel or officers." (Id.) (quoting Wilson v. Seiter, 501
11 U.S. 294, 302-03 (1991)).

12
13 Here, it appears that Plaintiff is raising an Eighth
14 Amendment claim because he was denied visits with his mother.
15 (Complaint at 3). "However, there is no constitutional right to
16 'access to a particular visitor.'" Keenan, 83 F.3d at 1092
17 (quoting Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454,
18 461 (1989)). While prison officials have a duty "to provide
19 humane conditions of confinement and to take reasonable measures
20 to guarantee the safety of inmates[,] not every injury results
21 in an Eighth Amendment violation. Osolinski v. Kane, 92 F.3d
22 934, 936-37 (9th Cir. 1996). Denial of visitation with parents
23 does not constitute the denial of "the minimal civilized measure
24 of life's necessities" as required for an Eighth Amendment claim.
25 Keenan, 83 F.3d at 1089. Therefore, "[a]n individual claim based
26 on indefinite withdrawal of visitation or denial of procedural
27 safeguards" does not give rise to a cruel and unusual punishment
28 claim. Overton v. Bazzetta, 539 U.S. 126, 137 (2003).

1 Accordingly, the Complaint must be dismissed with leave to amend.

2
3 **C. Plaintiff Fails To State A Claim For Retaliation**

4
5 Plaintiff alleges that Defendant improperly "used his
6 authority over inmate visitation at CSP-LA to restrict and deny
7 Plaintiff and mother visiting" in retaliation for Plaintiff's
8 cooperation with federal authorities in an MCJ investigation.
9 (Complaint at 3-4). Plaintiff also alleges that Defendant
10 "purposely frustrated the process by refusing to provide an
11 informal response to Plaintiff['s] dispute" when Plaintiff filed
12 a CDCR-602 grievance. (Id. at 3). The Ninth Circuit has set
13 forth the minimum pleading requirements for a Section 1983 claim
14 alleging that prison employees have retaliated against an inmate
15 for exercising a First Amendment right:

16
17 Within the prison context, a viable claim of First
18 Amendment retaliation entails five basic elements: (1)
19 An assertion that a state actor took some adverse
20 action against an inmate (2) because of (3) that
21 prisoner's protected conduct, and that such action (4)
22 chilled the inmate's exercise of his First Amendment
23 rights, and (5) the action did not reasonably advance
24 a legitimate correctional goal.

25
26 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
27 (footnote omitted). A plaintiff does not have to show that his
28 speech was actually suppressed. A plaintiff's showing that his

1 First Amendment rights were chilled, even if not "necessarily
2 silenced," is enough to state a claim. Id. at 562. Moreover,
3 even if a plaintiff fails to allege a chilling effect on speech,
4 he may still state a claim if he alleges he suffered some other
5 harm. Id. at 568 n.11. No specific threat of harm need be
6 alleged. Brodheim v. Cry, 584 F.3d 1262, 1269-70 (9th Cir.
7 2009).

8
9 Here, the first four requirements to state a claim for
10 retaliation appear to be satisfied. Plaintiff has alleged that
11 Defendant took adverse action against him by denying his mother
12 visitation privileges. Plaintiff has also alleged that Defendant
13 took this action against him because of his protected conduct,
14 i.e., cooperating as a witness with respect to the abuse
15 Plaintiff witnessed Sheriff's Deputies inflicting on other
16 detainees at MCJ. Finally, Plaintiff has shown that this adverse
17 action caused him to suffer some other harm, such as being denied
18 visitation with his mother.³

19
20 Plaintiff has not sufficiently alleged, however, that
21 Defendant's actions did not reasonably advance a legitimate
22 correctional goal. Plaintiff admitted in his complaint that CSP-
23 LA provided a legitimate reason why it did not allow his mother
24 to visit him. (Complaint at 4). According to Plaintiff, the
25 institution maintains that the reason it did not allow his mother

26 ³ Although this may be a harm within the context of a
27 retaliation claim, family visitation is not a liberty interest.
28 See Thompson, 490 U.S. at 460-61 (no liberty interest in visits
with "a particular visitor").

1 visitation was because the visiting questionnaire was "initially
2 processed and disapproved under provisions set forth in
3 California Code of Regulations (CCR) Title 15, Section 3172.1."
4 (Id.). Plaintiff has not clearly alleged that the excuse
5 provided by CSP-LA was purely pretextual. Indeed, Plaintiff has
6 merely concluded that Defendant "created the denial of Plaintiff
7 and mother visits." (Id.); see also Ashcroft v. Iqbal, 556 U.S.
8 662, 677-80 (2009) (mere conclusory statements, unlike factual
9 allegations, are not entitled to a presumption of truth and that
10 any remaining factual allegations and reasonable inferences from
11 them must plausibly support a claim for relief). Accordingly, to
12 the extent Plaintiff is alleging a claim for retaliation, the
13 Complaint fails to state a claim. Accordingly, the Complaint
14 must be dismissed with leave to amend.

15
16 **D. Plaintiff's Allegations Based Upon His Dissatisfaction With**
17 **The Administrative Grievance Process Fail To State A Claim**

18
19 The existence of a prison grievance procedure does not
20 create any substantive rights enforceable under the Due Process
21 Clause. See, e.g., Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th
22 Cir. 1996) ("With respect to the Due Process Clause, any right to
23 a grievance procedure is a procedural right, not a substantive
24 one. Accordingly, a state's inmate grievance procedures do not
25 give rise to a liberty interest protected by the Due Process
26 Clause.") (citations omitted); Doe v. Moore, 410 F.3d 1337, 1350
27 (11th Cir. 2005) ("State-created procedural rights that do not
28 guarantee a particular substantive outcome are not protected by

1 the Fourteenth Amendment, even where such procedural rights are
2 mandatory.") (internal quotation marks omitted). Consequently,
3 an inmate does not have a right to any particular grievance
4 procedure or result. See, e.g., Ramirez v. Galaza, 334 F.3d 850,
5 860 (9th Cir. 2003) ("[I]nmates lack a separate constitutional
6 entitlement to a specific prison grievance procedure.") (citing
7 Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)); Geiger v.
8 Jowers, 404 F.3d 371, 374 (5th Cir. 2005) (an inmate "does not
9 have a federally protected liberty interest in having . . .
10 grievances resolved to his satisfaction"). Moreover, a prison
11 official's failure to process a grievance, without more, is
12 insufficient to establish liability under section 1983. See
13 Buckey v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993).

14
15 Plaintiff's allegations regarding the grievance process are
16 particularly confusing. Plaintiff states in his Complaint that
17 "Defendant Riverra purposely frustrated the process by refusing
18 to provide an informal response to Plaintiff['s] dispute...."
19 (Complaint at 3). As noted above, Plaintiff does not have a
20 constitutional right to any particular grievance procedure or
21 outcome. Accordingly, any purported claim challenging the
22 grievance process must be dismissed.

23 24 IV.

25 CONCLUSION

26
27 For the reasons stated above, the Complaint is dismissed
28 with leave to amend. If Plaintiff still wishes to pursue this

1 action, he is granted **thirty (30) days** from the date of this
2 Memorandum and Order within which to file a First Amended
3 Complaint. In any amended complaint, the Plaintiff shall cure
4 the defects described above. **Plaintiff shall not include new**
5 **defendants or new allegations that are not reasonably related to**
6 **the claims asserted in the original complaint.** The First Amended
7 Complaint, if any, shall be complete in itself and shall bear
8 both the designation "First Amended Complaint" and the case
9 number assigned to this action. It shall not refer in any manner
10 to any previously filed complaint in this matter.

11
12 In any amended complaint, Plaintiff should confine his
13 allegations to those operative facts supporting each of his
14 claims. Plaintiff is advised that pursuant to Federal Rule of
15 Civil Procedure 8(a), all that is required is a "short and plain
16 statement of the claim showing that the pleader is entitled to
17 relief." **Plaintiff is strongly encouraged to utilize the**
18 **standard civil rights complaint form when filing any amended**
19 **complaint, a copy of which is attached.** In any amended
20 complaint, Plaintiff should identify the nature of each separate
21 legal claim and make clear what specific factual allegations
22 support each of his separate claims. Plaintiff is strongly
23 encouraged to keep his statements concise and to omit irrelevant
24 details. It is not necessary for Plaintiff to cite case law or
25 include legal argument. Plaintiff is also advised to omit any
26 claims for which he lacks a sufficient factual basis.

